

PROPOSITION
80 | **ELECTRIC SERVICE PROVIDERS.
REGULATION.
INITIATIVE STATUTE.**

Official Title and Summary

Prepared by the Attorney General

ELECTRIC SERVICE PROVIDERS. REGULATION. INITIATIVE STATUTE.

- Subjects electric service providers, as defined, to control and regulation by California Public Utilities Commission.
- Imposes restrictions on electricity customers' ability to switch from private utilities to other electric providers.
- Provides that registration by electric service providers with Commission constitutes providers' consent to regulation.
- Requires all retail electric sellers, instead of just private utilities, to increase renewable energy resource procurement by at least 1% each year, with 20% of retail sales procured from renewable energy by 2010, instead of current requirement of 2017.
- Imposes duties on Commission, Legislature and electrical providers.

SUMMARY OF LEGISLATIVE ANALYST'S ESTIMATE OF NET STATE AND LOCAL GOVERNMENT FISCAL IMPACT:

- Potential annual state administrative costs ranging from negligible up to around \$4 million for regulatory activities of the California Public Utilities Commission, paid for by fee revenues.
- Unknown net impact on state and local government costs and revenues due to the measure's uncertain impact on retail electricity rates.

ANALYSIS BY THE LEGISLATIVE ANALYST

BACKGROUND

Provision of Electricity Service. Californians generally receive their electricity service from one of three types of providers: investor owned utilities (IOUs), local publicly owned electric utilities, and electric service providers (ESPs). Investor owned utilities have a defined geographic service area and are required by law to serve customers in that area. The three largest electricity IOUs in the state are Pacific Gas & Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company. The California Public Utilities Commission (PUC) regulates the IOUs' rates and how electricity service is provided to their customers (commonly referred to as "terms of service"). (See the nearby text box for definitions of commonly used terms throughout this analysis.)

Publicly owned electric utilities are public entities that provide electric service to residents and businesses in their local area. Unlike IOUs, they are not regulated by the PUC. Major publicly owned electric utilities include the Los Angeles Department of Water and Power, the Sacramento Municipal Utility District, and the Imperial Irrigation District.

The ESPs provide retail electricity service to customers who have chosen not to receive electricity service from the utility that serves their area.

Instead, these customers have entered into "direct access" contracts with ESPs for their electricity. This electricity is delivered to these ESP customers through the transmission and distribution system of their local utility. There are currently eighteen registered ESPs operating in the state, generally serving large industrial and commercial businesses. The ESPs also provide electricity to certain state and local government entities, such as the California State University system, several University of California campuses, some community college districts, and some local school districts.

Under current law, ESPs are only required to register with the PUC for licensing purposes; their rates and terms of service are not regulated by the PUC. However, the PUC has applied certain additional requirements to ESPs (discussed below).

Currently, the IOUs provide about 71 percent of the electricity in the state; publicly owned electric utilities provide 14 percent; ESPs provide 11 percent; and the state's Department of Water Resources provides 4 percent (chiefly for the operation of the State Water Project).

Deregulation and Direct Access. California began the process of restructuring electricity service in the early 1990s by introducing competition into the generation of electricity, with the ultimate goal being lower prices for IOU customers. The plan ultimately adopted in 1996 included a "transition"

ANALYSIS BY THE LEGISLATIVE ANALYST (CONTINUED)

COMMONLY USED TERMS—PROPOSITION 80

- ✓ **Community Choice Aggregation**—The authority of a city or county to aggregate all the electrical demand of the residents, businesses, and municipal users under its jurisdiction and to meet this demand from an electricity provider other than the electric utility currently serving that local area.
- ✓ **Direct Access**—Retail electricity service is provided to a customer directly from an electric service provider, rather than from the utility (local publicly owned or investor owned) that serves the customer's area.
- ✓ **ESP (Electric Service Provider)**—Companies that provide retail electricity service directly to customers who have chosen not to receive service from the utility that serves their area. Customers of ESPs are referred to as “direct access” customers.
- ✓ **IOU (Investor Owned Utility)**—Privately owned electric utilities that have a defined geographic service area and are required by law to serve customers in that area. The Public Utilities Commission regulates the IOUs’ rates and terms of service.
- ✓ **Procurement Process**—The process, overseen by the Public Utilities Commission, through which the IOUs secure long-term electricity supplies through competitive bidding.
- ✓ **PUC (Public Utilities Commission)**—The state agency that regulates various types of utilities, including investor owned electric utilities.
- ✓ **Renewables Portfolio Standard**—Requirement that electricity providers increase their share of electricity generated from renewable sources (such as wind or solar power) according to a specified timeline.
- ✓ **Resource Adequacy Requirement**—Requirement of the PUC that IOUs and ESPs show that they will have adequate electricity supplies to meet projected demand and maintain system reliability.
- ✓ **Time-Differentiated Electricity Rates**—An electricity rate structure under which customers would be charged different prices for electricity based on the time of day in which it is used, given that the availability and cost of providing electricity varies depending on the time of day.

period during which the IOUs were to sell off their fossil fuel power plants to independent generators, while retaining their hydroelectric and nuclear power plants. During this transition period, the PUC continued to regulate the IOUs’ rates. Eventually, however, electricity purchases and customer rates were to be determined in a competitive market. In such a market, customers could choose to have the IOUs purchase the electricity on their behalf, or they could purchase electric power *directly* from ESPs through “direct access.”

The deregulation process was put on hold in response to the energy crisis that arose in 2000 and early 2001. At that time, the combination of sharply rising electricity demand, lagging investment in new power plants, and other factors led to electricity shortages and sharply rising prices. At that point, two of the IOUs were still under the transition period and therefore remained under PUC rate regulation. These IOUs were not permitted to pass along the sharply rising wholesale costs to their customers and were pushed into near financial insolvency.

In response to the energy crisis, the state began purchasing electricity on behalf of the IOUs and halted several aspects of deregulation. Among these, the state prevented the IOUs from continuing to sell their power plants and suspended new direct access for IOU customers. Under existing law, this suspension will continue until long-term electricity contracts signed on behalf of the IOUs by the Department of Water Resources expire. The last of the contracts expires in 2015.

While individual customers are currently barred from entering into direct access service, current law does allow a city or county to aggregate all the electrical demand of the residents, businesses, and municipal users under its jurisdiction and to meet this demand from an electricity provider other than the local IOU, such as an ESP. This variation on direct access is referred to as “community choice aggregation.”

Long-Term Procurement Process and Resource Adequacy Requirements. As required by current law, the PUC is currently overseeing a process through which the IOUs secure long-term electricity supplies through a competitive bidding process. Under this competitive “procurement process,” the IOUs select a mix of electricity supplied by their own power plants and electricity provided under contract from other generators to meet their long-term electricity needs. The PUC approved the IOUs’ first long-term procurement plans in April 2004.

ANALYSIS BY THE LEGISLATIVE ANALYST (CONTINUED)

In addition, the PUC has adopted rules requiring both the IOUs and the ESPs to show that they will have enough electricity to meet projected demand, known as a resource adequacy requirement.

Renewables Portfolio Standard. Current law requires that electricity providers, including the IOUs, community choice aggregators, and ESPs, increase their share of electricity generated from renewable sources (such as solar or wind power) by 1 percent per year, up to 20 percent of their total electricity supply by 2017. This requirement is known as the renewables portfolio standard.

The PUC has adopted a policy of accelerating the 20 percent requirement to 2010, but this is not required by law. Current law does not require electricity providers to continue to increase the proportion of their electricity from renewable sources once they have reached the 20 percent requirement.

Time-Differentiated Electricity Rates. Generally, all but the largest electricity consumers pay electricity rates that do not change based on the time of day or season. The IOUs have submitted proposals to the PUC to implement a system of time-differentiated rates that would apply to more consumers. Under such a system, customers would be charged different prices for electricity based on the time of day in which it is used, given that the cost to the IOUs of providing electricity varies depending on the time of day. For example, during peak demand times, customers would pay higher rates, while they would pay lower rates during the lower demand times of the day. In theory, time-differentiated pricing would encourage consumers to reduce electricity consumption during periods of peak demand, typically hot summer afternoons when electricity supply is the tightest and therefore its cost is high. The PUC is currently considering IOU proposals to implement time-differentiated rates in a regulatory proceeding, and has not yet determined how such a system of rates would be applied to more consumers.

PROPOSAL

Overview of Measure. The measure addresses a number of aspects of the state's electricity market: the regulation of the ESPs and direct access, the procurement process, resource adequacy requirements, the renewables portfolio standard, and the use of time-differentiated electricity rates. Each of these aspects is discussed below.

Regulation of ESPs. The measure places the ESPs under the "jurisdiction, control and regulation" of the PUC. The measure specifies that the scope of this regulation includes the enforcement of requirements related to energy procurement, contracting standards, resource adequacy, energy efficiency, demand response, and the renewables portfolio standard. While the measure broadens the authority of the PUC to regulate the ESPs, it does not, however, specify the extent to which it would regulate ESP rates and terms of service.

Direct Access. In general, the measure bars any customer currently receiving electricity service from an IOU from switching to an ESP. Customers currently being served by direct access contracts with ESPs could continue to receive electricity service from ESPs, effectively "grandfathering" in their direct access service. Direct access customers could also return to IOU electricity service under specified conditions. The measure does not restrict current or future community choice aggregation.

Procurement Process. The measure requires that the PUC implement a long-term procurement process, and directs the PUC to consider a series of factors in evaluating the IOUs' long-term procurement plans. While the PUC generally now considers the factors listed in the measure, current law does not specify that all of these factors be considered.

The measure also requires that the first priority for IOUs in procuring new electricity is to be from "cost-effective" energy efficiency and conservation programs, followed by "cost-effective" renewable resources, and then from traditional sources such as fossil fuel burning power plants. This "loading order," as it is known, has been adopted by the PUC, but is not currently required by law.

Resource Adequacy Requirement. The measure requires both the IOUs and ESPs to show that they are able to meet peak demand with adequate reserves to ensure system reliability. This puts into law current PUC practice.

Renewables Portfolio Standard. The measure accelerates to December 31, 2010, the deadline for the IOUs and ESPs to meet the 20 percent renewable resources requirement, consistent with a recent PUC decision. The measure also deletes a provision in existing law that explicitly provides that electricity providers are not required to increase their share of electricity from renewable sources once the 20 percent requirement has been reached.

ANALYSIS BY THE LEGISLATIVE ANALYST (CONTINUED)

Time-Differentiated Electricity Rates. Under the measure, residential and small commercial customers with electricity use under a specified amount and in a building built before January 2006 could not be required to pay time-differentiated electricity rates without their consent.

Amending the Measure. The measure states that the Legislature may amend the measure only to achieve its “purposes and intent” and would require a two-thirds vote of both legislative houses and signature of the Governor to do so. To the extent that the measure puts into law existing processes and policies of the PUC that are not currently required by law, the measure would make it more difficult for the state to modify these practices and policies when, for example, conditions in the electricity market change.

FISCAL EFFECTS

State Administrative Costs to Implement Measure. The measure could increase the PUC’s administrative costs, largely depending on the extent to which the commission exercises the broadened authority given to it under the measure to regulate the ESPs. The fiscal impact on the PUC could range from a negligible cost up to around \$4 million annually. The upper end of the range would occur if the PUC regulates the rates and terms of service of the ESPs. The measure, however, would not increase the PUC’s costs in areas where the measure puts into law existing PUC practices related to procurement, resource adequacy, and the renewables portfolio standard. Under current law, the potential additional costs would be funded by fees paid by electricity customers.

Uncertain Impact on State and Local Costs and Revenues. The primary fiscal effect of this measure

on state and local governments would depend on the impact it would have on electricity rates.

Changes in electricity rates would affect government *costs* since state and local governments are large consumers of electricity. To the extent that the measure limits state and local governments from entering into new direct access contracts, the measure takes away an opportunity for these government entities to potentially reduce their electricity costs.

State and local *revenues* would be affected by the measure’s impact on electricity rates, since tax revenues received by governments are affected by business profits, personal income, and sales—all of which in turn are affected by what persons and businesses pay for electricity.

It is not possible to determine the net effect of this measure on electricity rates (and hence state and local government costs and revenues), as the net impact would be influenced by several potentially offsetting factors. For example:

- To the extent that the measure increases certainty about the structure of the electricity market, this may encourage additional investment in the market. Such investment, including the construction of new generation, could increase the supply of electricity and potentially lower electricity rates.
- On the other hand, the measure’s ban on customers entering into new direct access contracts with ESPs could result in higher electricity rates over the long term by limiting competition in the retail electricity market.

The measure’s impact on retail electricity rates would be influenced by a number of factors, including the specific structure of the regulations adopted by the PUC to implement the proposition.

Argument in Favor of Proposition 80

Five years ago, California was devastated by an electricity crisis.

Enron and other energy traders held Californians hostage, extorting tens of billions of dollars from us. They manipulated the electricity market, driving up wholesale prices 1000%. Californians faced rolling blackouts and untold economic damage.

Audiotapes released by the U.S. Justice Department revealed Enron energy traders boasting of “making buckets of money” by creating power shortages. One trader laughed about “all the money you guys stole from those poor grandmothers in California,” while another ordered a power plant worker to “just go ahead and shut her down.”

California’s failed experiment in electric deregulation cost our people and businesses billions of dollars.

We learned many lessons from that disaster. The state has taken some positive steps to clean up the mess—but not nearly enough. Amazingly, legislation to require sufficient supplies of electricity was vetoed by the Governor last year.

That’s why Proposition 80—the Repeal of Deregulation and Blackout Prevention Act—is on the ballot.

It provides critical reforms to make sure our deregulation nightmare never returns.

It provides the stability necessary to ensure long-term investment in new, clean electricity supplies.

Here’s how Proposition 80 accomplishes these goals:

Lower rates. It requires independent generators and utilities to compete against each other to give ratepayers the best deal on new power plants.

Adequate supplies. It requires all electricity providers to have enough power and reserves to keep the lights on. That simple requirement—critical to ending market manipulation and keeping the system stable—was vetoed last year.

Market stability. It makes sure that utilities know how many customers they will have to serve, so they can make long-term investments in new supplies. Amazingly,

deregulation advocates have pushed legislation that would create more uncertainty and destabilize the market.

Regulation. It ensures that all electricity providers are subject to regulation and control, so that traders cannot manipulate the system.

Renewables and energy efficiency. It speeds up the shift to renewable energy, and gives first priority to energy efficiency programs.

Ratepayer protection. It prevents small ratepayers from being forced onto potentially expensive time-of-use rates without their consent—especially important in hot climates.

Proposition 80 was carefully drafted by the state’s foremost consumer advocates and legal experts. It allows for amendments by the Legislature consistent with its purposes, to adjust to changing times.

Proposition 80 is a common-sense measure that achieves a clear goal:

Never again will California be taken to the cleaners by greedy energy traders.

Never again will we be subject to rolling blackouts and skyrocketing electricity prices because of power shortages and market manipulation.

Instead, Proposition 80 means that Californians can look forward to getting the cleanest, greenest energy at the lowest possible prices.

Proposition 80 means that Californians can expect a stable electricity future, with sensible long-term investment in cost-effective energy solutions.

That’s why consumers, seniors, environmentalists, business groups, labor organizations, minority groups, and people from all walks of life support Proposition 80.

ROBERT FINKELSTEIN, Executive Director
The Utility Reform Network (TURN)

RICHARD HOLOBER, Executive Director
Consumer Federation of California

NAN BRASMER, President
California Alliance of Retired Americans

Rebuttal to Argument in Favor of Proposition 80

Proposition 80 is the wrong way to make energy policy for California. The initiative would lock in renewable energy goals established back in 2002, even though environmental groups and Governor Schwarzenegger have urged that California should set higher targets for renewable energy. The initiative would make it harder for the Legislature to pass a stronger renewable plan in the future.

Proposition 80 is the wrong way for California. Vote NO on Proposition 80.

V. John White, Executive Director

Center for Energy Efficiency and Renewable Technologies

We agree with Mr. White and believe the proponents’ confusing argument shows just how risky Proposition 80 really is. No one wants to relive the Enron Era. This vote is about the future, not the past.

PROPOSITION 80 IS POORLY WRITTEN, RISKY ENERGY POLICY. IT’S BAD FOR CONSUMERS AND BAD FOR THE ENVIRONMENT. Energy policy is too complex for the initiative process and should be developed through a more comprehensive approach that includes public hearings.

What does Proposition 80 mean to you?

PROPOSITION 80 WON’T PREVENT ANOTHER ENERGY CRISIS OR FUTURE BLACKOUTS. In fact, it could stall investment in new power plants California needs to prevent another energy crisis.

PROPOSITION 80 WON’T LOWER YOUR ELECTRIC BILL AND IT ELIMINATES CUSTOMER CHOICE. Proposition 80 prohibits power consumers like schools and hospitals from buying cheaper and cleaner energy, making needed goods and services more expensive and placing our environment at risk.

Proposition 80 is too risky. Protect consumers and the environment. Vote No on Proposition 80.

LES NELSON, President
California Solar Energy Industries Association

DOROTHY ROTHROCK, Co-Chair
Californians for Reliable Electricity

TONY VALENZUELA, Associate Vice President
Facilities, Development and Operations at
San Jose State University

Argument Against Proposition 80

Proposition 80 is a high-risk approach that could hurt consumers, the environment and the state's economy. This deeply flawed measure will undermine the security of state energy supplies, undercut the availability of affordable electricity and undercut the construction of environmentally-friendly renewable energy generation from wind, solar, and geothermal resources.

It will sharply restrict consumer choice about who we buy our electricity from and how much we pay for services. It could well lead us down the road toward another serious energy crisis. That's because Proposition 80 is the wrong way to make energy policy for California.

Reinventing California's energy system through the initiative process, without public hearings is too great a risk to take. Instead, this critical issue should be addressed carefully through public hearings that involve all affected parties, including the state Utility and Energy Commissions, consumer groups, and small business associations.

Because Proposition 80 takes away energy choices and price competition, energy cost savings will be limited or lost for many of California's vital institutions such as community colleges, the University of California and the State University systems, local school districts, hospitals, and city and county governments. Taxpayers, students, teachers, and patients will ultimately pay for these higher energy costs.

PROPOSITION 80 TAKES AWAY THE RIGHT OF CONSUMERS AND BUSINESSES TO CHOOSE AN ENERGY SUPPLIER THAT CAN SAVE MONEY. Just when California needs more jobs and investments in our infrastructure to help our economy, Proposition 80 sends the wrong signal of uncertainty and risk. Proposition 80 takes away an energy choice that often attracts high paying jobs and new investment.

Proposition 80 would make it extremely difficult to improve the State's standards for generating electricity from renewable sources, which could seriously undermine adoption of wind, solar, and geothermal technologies. Growth of California's green businesses could be placed at risk.

Electricity regulation is too risky to be addressed through the initiative process. Flaws in this measure will be very difficult or impossible to fix. Proposition 80 is bad policy because it:

- Restricts energy choices for all consumers, big and small.
- Limits the market for increasing solar, wind, and geothermal energy resources—even if demanded by consumers.
- Threatens to increase the cost of energy for community colleges, the University of California and State University systems, hospitals, and local governments that will end up being paid by taxpayers.
- Discourages future jobs and business investment in California.
- Destabilizes the current progress toward a secure energy future for California.

Proposition 80 IS A HIGH RISK PROPOSITION THAT WILL HURT CONSUMERS AND THE ENVIRONMENT. Vote NO on Proposition 80.

LES NELSON, President

California Solar Energy Industries Association

KARL GAWELL, Executive Director

Geothermal Energy Association

JAMES SWEENEY, Co-Director of the Energy,

Natural Resources and the Environment Program at the Stanford Institute for Economic Policy Research

Rebuttal to Argument Against Proposition 80

The opponents' argument makes the case *FOR* Proposition 80. They want to bring back deregulation by calling it consumer choice!

The first round of deregulation also emphasized "consumer choice." The "choice" for consumers was higher rates, market manipulation, and rolling blackouts.

Deregulation brought a reliable electric system to its knees. It allowed traders to manipulate the market. Enron signed up the University of California—and then walked away. The State was forced into expensive long-term contracts to clean up the mess! *And ordinary consumers had no real choices.*

Proposition 80 reins in deregulation and ensures that electricity providers are accountable in the future. *That's the number one reason you should vote for it.*

The opponents' other claims are simply wrong.

Renewables? Proposition 80 not only speeds up from 2017 to 2010 the deadline for purchasing 20% of our energy needs from renewables, it *repeals the existing legal limit on utilities' purchases of renewables*. How can that be bad for renewable energy?

Misuse of the initiative process? Major provisions of Proposition 80 passed the Legislature but were vetoed at the urging of energy company lobbyists. This is exactly what the initiative process was designed for.

Competition? Proposition 80 embraces competition between independent generators and utilities to build power plants at the lowest cost to consumers.

Don't be swayed by fear tactics from the energy companies! We've had enough failure. Proposition 80 will stabilize the electrical system, avoid blackouts, bring rates down, and benefit all Californians.

Vote YES on Proposition 80.

MIKE MOWREY, International Vice-President, 9th District International Brotherhood of Electrical Workers, AFL-CIO

HENRY L. (HANK) LACAYO, State President Congress of California Seniors

STEVE BLACKLEDGE, Policy Director

California Public Interest Research Group (CalPIRG)

(b) As an alternative to the adoption of regulations pursuant to subdivision (a), and notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the director may implement this article, in whole or in part, by means of a provider bulletin or other similar instructions, without taking regulatory action, provided that no such bulletin or other similar instructions shall remain in effect after July 31, 2007. It is the intent that regulations adopted pursuant to subdivision (a) shall be in place on or before July 31, 2007.

CHAPTER 7. ENFORCEMENT

130570. The Attorney General, upon the Attorney General's own initiative or upon petition of the department or of 50 or more residents of the state, shall investigate suspected violations of this division.

130571. The Attorney General may require, by summons, the attendance and testimony of witnesses and the production of books and papers before the Attorney General related to any such matter under investigation. The summons must be served in the same manner as summonses for witnesses in criminal cases, and all provisions of law related to criminal cases apply to summonses issued under this section so far as they are applicable. All investigations or hearings under this section to which witnesses are summoned or called upon to testify or to produce books, records, or correspondence are public or private at the choice of the person summoned and must be held in the county where the act to be investigated is alleged to have been committed, or if the investigation is on petition, it must be held in the county in which the petitioners reside.

130572. A court of competent jurisdiction may by order, upon application of the Attorney General, compel the attendance of witnesses, the production of books and papers, including correspondence, and the giving of testimony before the Attorney General in the same manner and to the same extent as before the superior court. Any failure to obey such an order may be punishable by that court as a contempt.

130574. If the Attorney General fails to act within 180 days to investigate suspected violations of this division, any person acting for the interests of itself, its members, or the general public may seek to obtain, in addition to other remedies, injunctive relief and a civil penalty in an amount of up to one hundred thousand dollars (\$100,000) or three times the amount of the damages, plus the costs of suit, including necessary and reasonable investigative costs, reasonable expert fees, and reasonable attorney's fees.

SEC. 1.5. Division 112.5 (commencing with Section 130600) is added to the Health and Safety Code, to read:

DIVISION 112.5. PROFITEERING
IN PRESCRIPTION DRUGS

130600. Profiteering in prescription drugs is unlawful and is subject to the provisions of this section. The provisions of this section apply to manufacturers, distributors, and labelers of prescription drugs. A manufacturer, distributor, or labeler of prescription drugs engages in illegal profiteering if that manufacturer, distributor or labeler:

(a) Exacts or demands an unconscionable price;

(b) Exacts or demands prices or terms that lead to any unjust or unreasonable profit;

(c) Discriminates unreasonably against any person in the sale, exchange, distribution, or handling of prescription drugs dispensed or delivered in the state; or

(d) Intentionally prevents, limits, lessens, or restricts the sale or distribution of prescription drugs in this state in retaliation for the provisions of this chapter.

130601. Each violation of this division is a civil violation for which the Attorney General or any person acting for the interests of itself, its members, or the general public may obtain, in addition to other remedies, injunctive relief and a civil penalty in an amount of one hundred thousand dollars (\$100,000) or three times the amount of the damages, whichever is greater, plus the costs of suit, including necessary and reasonable investigative costs, reasonable expert fees, and reasonable attorney's fees.

SEC. 2. (a) This act shall be broadly construed and applied in order to fully promote its underlying purposes. If any provision of this initiative conflicts directly or indirectly with any other provisions of law, or any other statute previously enacted by the Legislature, it is the intent of the voters that such provisions shall be null and void to the extent that they are inconsistent with this initiative and are hereby repealed.

(b) No provision of this act may be amended by the Legislature except to further the purposes of that provision by a statute passed in each house by roll call vote entered in the journal, two-thirds of the membership concurring, or by a statute that becomes effective only when approved by the electorate. No amendment by the Legislature shall be deemed to further the purposes of this act unless it furthers the purpose of the specific provision of this act that is being amended. In any judicial action with respect to any legislative amendment, the court shall exercise its independent judgment as to whether or not the amendment satisfies the requirements of this subdivision.

(c) If any provision of this act or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of the act that can be given effect in the absence of the invalid provision or application. To this end, the provisions of this act are severable.

PROPOSITION 80

This initiative measure is submitted to the people in accordance with the provisions of Section 8 of Article II of the California Constitution.

This initiative measure amends, repeals, and adds sections to the Public Utilities Code; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

Section 1. This measure shall be known and may be cited as "The Repeal of Electricity Deregulation and Blackout Prevention Act."

Section 2. (a) The people of the State of California find and declare all of the following:

(1) A reliable electricity system that delivers power to all consumers at just and reasonable prices is vital to the health, safety, and well-being of all Californians.

(2) Electricity is a unique good in modern society. It cannot be stored, must be delivered to the entire grid at the same time it is produced, and has no substitutes. Failure of supply for even a few seconds can lead to blackouts and disruption.

(3) The deregulation of the electricity market in California was a disastrous, ill-conceived experiment that led to rolling blackouts, supply shortages, and market manipulation, resulting in billions of dollars in excessive prices being borne by California ratepayers.

(4) The financial crisis and regulatory uncertainty that were created by the deregulated market have stifled investment in needed power plants.

(5) Deregulation of electricity, including the authorization of direct transactions, creates uncertainty regarding the customer base that must be served, making it impossible to conduct the long-term integrated resource planning that is necessary for an environmentally sound and reliable electricity system, and enables cost-shifting from large customers to small.

(6) Despite the past failures of electricity deregulation, its advocates are once again urging the Legislature and the Public Utilities Commission to launch a further experiment that may inflict additional damage on ratepayers and the California economy.

(b) In enacting this measure, it is the intent of the people to achieve the following policy goals:

(1) Ensure that all customers receive reliable retail electric service at just and reasonable rates.

(2) Provide a stable customer base for planning purposes, in order to assure resource adequacy and prevent inappropriate cost shifting. To that end, no new direct transactions shall be permitted, except as provided in this measure.

(3) Ensure that all rates, terms, and conditions of retail electric service are regulated by the Public Utilities Commission in a non-discriminatory manner as to all suppliers of retail electric service, and that all electricity service providers are under the jurisdiction of the commission.

TEXT OF PROPOSED LAWS (PROPOSITION 80 CONTINUED)

(4) Ensure that the electrical system is developed in a manner that mitigates and minimizes any adverse environmental impacts to the maximum extent reasonably practicable by, among other things, requiring that each retail seller of electricity obtain at least 20 percent of its retail sales from eligible renewable energy resources no later than December 31, 2010.

Section 3. Section 218.3 of the Public Utilities Code is amended to read:

218.3. "Electric service provider" means an entity that offers electrical service to customers within the service territory of an electrical corporation, as defined in Section 218, but does not include an entity that offers electrical service solely to service customer load consistent with subdivision (b) of Section 218, and does not include an electrical corporation, as defined in Section 218, or a public agency that offers electrical service to residential and small commercial customers within its jurisdiction, or within the service territory of a local publicly owned electric utility. "Electric service provider" includes the unregulated affiliates and subsidiaries of an electrical corporation, as defined in Section 218. *An electric service provider is subject to the jurisdiction, control, and regulation of the commission and the provisions of this part, pursuant to subdivision (f) of Section 394.*

Section 4. Section 330 of the Public Utilities Code is repealed.

330.—In order to provide guidance in carrying out this chapter, the Legislature finds and declares all of the following:

(a) It is the intent of the Legislature that a cumulative rate reduction of at least 20 percent be achieved not later than April 1, 2002, for residential and small commercial customers, from the rates in effect on June 10, 1996. In determining that the April 1, 2002, rate reduction has been met, the commission shall exclude the costs of the competitively procured electricity and the costs associated with the rate reduction bonds, as defined in Section 840.

(b) The people, businesses, and institutions of California spend nearly twenty-three billion dollars (\$23,000,000,000) annually on electricity, so that reductions in the price of electricity would significantly benefit the economy of the state and its residents.

(c) The Public Utilities Commission has opened rulemaking and investigation proceedings with regard to restructuring California's electric power industry and reforming utility regulation.

(d) The commission has found, after an extensive public review process, that the interests of ratepayers and the state as a whole will be best served by moving from the regulatory framework existing on January 1, 1997, in which retail electricity service is provided principally by electrical corporations subject to an obligation to provide ultimate consumers in exclusive service territories with reliable electric service at regulated rates, to a framework under which competition would be allowed in the supply of electric power and customers would be allowed to have the right to choose their supplier of electric power.

(e) Competition in the electric generation market will encourage innovation, efficiency, and better service from all market participants, and will permit the reduction of costly regulatory oversight.

(f) The delivery of electricity over transmission and distribution systems is currently regulated, and will continue to be regulated to ensure system safety, reliability, environmental protection, and fair access for all market participants.

(g) Reliable electric service is of utmost importance to the safety, health, and welfare of the state's citizenry and economy. It is the intent of the Legislature that electric industry restructuring should enhance the reliability of the interconnected regional transmission systems, and provide strong coordination and enforceable protocols for all users of the power grid.

(h) It is important that sufficient supplies of electric generation will be available to maintain the reliable service to the citizens and businesses of the state.

(i) Reliable electric service depends on conscientious inspection and maintenance of transmission and distribution systems. To continue and enhance the reliability of the delivery of electricity, the Independent System Operator and the commission, respectively, should set inspection, maintenance, repair, and replacement standards.

(j) It is the intent of the Legislature that California enter into a compact with western region states. That compact should require the publicly and investor-owned utilities located in those states, that

self energy to California retail customers, to adhere to enforceable standards and protocols to protect the reliability of the interconnected regional transmission and distribution systems:

(k) In order to achieve meaningful wholesale and retail competition in the electric generation market, it is essential to do all of the following:

(1) Separate monopoly utility transmission functions from competitive generation functions, through development of independent, third-party control of transmission access and pricing:

(2) Permit all customers to choose from among competing suppliers of electric power:

(3) Provide customers and suppliers with open, nondiscriminatory, and comparable access to transmission and distribution services:

(4) The commission has properly concluded that:

(1) This competition will best be introduced by the creation of an Independent System Operator and an Independent Power Exchange:

(2) Generation of electricity should be open to competition:

(3) There is a need to ensure that no participant in these new market institutions has the ability to exercise significant market power so that operation of the new market institutions would be distorted:

(4) These new market institutions should commence simultaneously with the phase in of customer choice, and the public will be best served if these institutions and the nonbypassable transition cost recovery mechanism referred to in subdivisions (s) to (w), inclusive, are in place simultaneously and no later than January 1, 1998:

(m) It is the intention of the Legislature that California's publicly owned electric utilities and investor-owned electric utilities should commit control of their transmission facilities to the Independent System Operator. These utilities should jointly advocate to the Federal Energy Regulatory Commission a pricing methodology for the Independent System Operator that results in an equitable return on capital investment in transmission facilities for all Independent System Operator participants:

(n) Opportunities to acquire electric power in the competitive market must be available to California consumers as soon as practicable, but no later than January 1, 1998, so that all customers can share in the benefits of competition:

(o) Under the existing regulatory framework, California's electrical corporations were granted franchise rights to provide electricity to consumers in their service territories:

(p) Consistent with federal and state policies, California electrical corporations invested in power plants and entered into contractual obligations in order to provide reliable electrical service on a nondiscriminatory basis to all consumers within their service territories who requested service:

(q) The cost of these investments and contractual obligations are currently being recovered in electricity rates charged by electrical corporations to their consumers:

(r) Transmission and distribution of electric power remain essential services imbued with the public interest that are provided over facilities owned and maintained by the state's electrical corporations:

(s) It is proper to allow electrical corporations an opportunity to continue to recover, over a reasonable transition period, those costs and categories of costs for generation-related assets and obligations, including costs associated with any subsequent renegotiation or buyout of existing generation-related contracts, that the commission, prior to December 20, 1995, had authorized for collection in rates and that may not be recoverable in market prices in a competitive generation market, and appropriate additions incurred after December 20, 1995, for capital additions to generating facilities existing as of December 20, 1995, that the commission determines are reasonable and should be recovered, provided that the costs are necessary to maintain those facilities through December 31, 2001. In determining the costs to be recovered, it is appropriate to net the negative value of above market assets against the positive value of below market assets:

(t) The transition to a competitive generation market should be orderly, protect electric system reliability, provide the investors in these electrical corporations with a fair opportunity to fully recover the costs associated with commission approved generation-related assets and obligations, and be completed as expeditiously as possible:

(u) The transition to expanded customer choice, competitive markets, and performance-based ratemaking as described in

TEXT OF PROPOSED LAWS (PROPOSITION 80 CONTINUED)

Decision 95-12-063, as modified by Decision 96-01-009, of the Public Utilities Commission, can produce hardships for employees who have dedicated their working lives to utility employment. It is preferable that any necessary reductions in the utility workforce directly caused by electrical restructuring, be accomplished through offers of voluntary severance, retraining, early retirement, outplacement, and related benefits. Whether workforce reductions are voluntary or involuntary, reasonable costs associated with these sorts of benefits should be included in the competition transition charge.

(v) Charges associated with the transition should be collected over a specific period of time on a nonbypassable basis and in a manner that does not result in an increase in rates to customers of electrical corporations. In order to insulate the policy of nonbypassability against incursions, if exemptions from the competition transition charge are granted, a firewall shall be created that segregates recovery of the cost of exemptions as follows:

(1) The cost of the competition transition charge exemptions granted to members of the combined class of residential and small commercial customers shall be recovered only from those customers.

(2) The cost of the competition transition charge exemptions granted to members of the combined class of customers other than residential and small commercial customers shall be recovered only from those customers. The commission shall retain existing cost allocation authority provided that the firewall and rate freeze principles are not violated.

(w) It is the intent of the Legislature to require and enable electrical corporations to monetize a portion of the competition transition charge for residential and small commercial consumers so that these customers will receive rate reductions of no less than 10 percent for 1998 continuing through 2002. Electrical corporations shall, by June 1, 1997, or earlier, secure the means to finance the competition transition charge by applying concurrently for financing orders from the Public Utilities Commission and for rate reduction bonds from the California Infrastructure and Economic Development Bank.

(x) California's public utility electrical corporations provide substantial benefits to all Californians, including employment and support of the state's economy. Restructuring the electric services industry pursuant to the act that added this chapter will continue these benefits, and will also offer meaningful and immediate rate reductions for residential and small commercial customers, and facilitate competition in the supply of electric power.

Section 5. Section 365 of the Public Utilities Code is repealed.

365.—The actions of the commission pursuant to this chapter shall be consistent with the findings and declarations contained in Section 330. In addition, the commission shall do all of the following:

(a) Facilitate the efforts of the state's electrical corporations to develop and obtain authorization from the Federal Energy Regulatory Commission for the creation and operation of an Independent System Operator and an independent Power Exchange, for the determination of which transmission and distribution facilities are subject to the exclusive jurisdiction of the commission, and for approval, to the extent necessary, of the cost recovery mechanism established as provided in Sections 367 to 376, inclusive. The commission shall also participate fully in all proceedings before the Federal Energy Regulatory Commission in connection with the Independent System Operator and the independent Power Exchange, and shall encourage the Federal Energy Regulatory Commission to adopt protocols and procedures that strengthen the reliability of the interconnected transmission grid, encourage all publicly owned utilities in California to become full participants, and maximize enforceability of such protocols and procedures by all market participants.

(b) (1) Authorize direct transactions between electricity suppliers and end use customers, subject to implementation of the nonbypassable charge referred to in Sections 367 to 376, inclusive. Direct transactions shall commence simultaneously with the start of an Independent System Operator and Power Exchange referred to in subdivision (a). The simultaneous commencement shall occur as soon as practicable, but no later than January 1, 1998. The commission shall develop a phase-in schedule at the conclusion of which all customers shall have the right to engage in direct transactions. Any phase-in of customer eligibility for direct transactions ordered by the commission shall be equitable to all

customer classes and accomplished as soon as practicable, consistent with operational and other technological considerations, and shall be completed for all customers by January 1, 2002.

(2) Customers shall be eligible for direct access irrespective of any direct access phase-in implemented pursuant to this section if at least one-half of that customer's electrical load is supplied by energy from a renewable resource provider certified pursuant to Section 383, provided however that nothing in this section shall provide for direct access for electric consumers served by municipal utilities unless so authorized by the governing board of that municipal utility.

Section 6. Section 365.5 of the Public Utilities Code is repealed.

365.5.—Nothing in this chapter shall prevent the commission from exercising its authority to investigate a process for certification and regulation of the rates, charges, terms, and conditions of default service. If the commission determines that a process for certification and regulation of default service is in the public interest, the commission shall submit its findings and recommendations to the Legislature for approval.

Section 7. Section 366 of the Public Utilities Code is repealed.

366.—(a) The commission shall take actions as needed to facilitate direct transactions between electricity suppliers and end-use customers. Customers shall be entitled to aggregate their electrical loads on a voluntary basis, provided that each customer does so by a positive written declaration. If no positive declaration is made by a customer, that customer shall continue to be served by the existing electrical corporation or its successor in interest, except aggregation by community choice aggregators, accomplished pursuant to Section 366.2.

(b) Aggregation of customer electrical load shall be authorized by the commission for all customer classes, including, but not limited, to small commercial or residential customers. Aggregation may be accomplished by private market aggregators, special districts, or on any other basis made available by market opportunities and agreeable by positive written declaration by individual consumers, except aggregation by community choice aggregators, which shall be accomplished pursuant to Section 366.2.

Section 8. Section 366 is added to the Public Utilities Code, to read:

366. (a) *No new direct transactions for retail electric service may be entered into after the effective date of this act, except by those customers of an electrical corporation who were being served via a direct transaction on January 1, 2005.*

(b) *A customer who was being served via a direct transaction on January 1, 2005, may return to service by an electrical corporation upon one year's notice to the electrical corporation, and thereafter may not enter into a new direct transaction. If a customer returns to service by an electrical corporation prior to the expiration of the one year notice period, that customer shall pay a generation rate that is equal to the higher of the electrical corporation's bundled generation portfolio price or the current short-term market price until the one year notice period has elapsed.*

(c) *A customer that was being served via a direct transaction on January 1, 2005, may take temporary default service from an electrical corporation, at a generation rate that is equal to the higher of the electrical corporation's bundled generation portfolio price or the current short-term market price, for a period of no longer than 120 days. If the customer does not enter into a new direct transaction by the end of the 120 day period, that customer may not thereafter enter into a new direct transaction, and shall continue to be served by the electrical corporation at the default service rate for a period of one year, at which point the customer will be charged the bundled generation portfolio price.*

(d) *Any customer that the commission has determined, in its Decision 02-11-022, is responsible to pay a cost recovery surcharge as a condition of having purchased electricity via a direct transaction shall continue to pay the cost recovery surcharge until full collection is achieved.*

(e) *Nothing in this section alters the provisions of Sections 366.1 and 366.2, relating to community choice aggregation.*

Section 9. Section 394 of the Public Utilities Code is amended to read:

394. (a) As used in this section, "electric service provider" means an entity that offers electrical service to customers within the service

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territory of an electrical corporation, but does not include an electrical corporation, as defined in Section 218, does not include an entity that offers electrical service solely to serve customer load consistent with subdivision (b) of Section 218, and does not include a public agency that offers electrical service to residential and small commercial customers within its jurisdiction, or within the service territory of a local publicly owned electric utility. "Electric service provider" includes the unregulated affiliates and subsidiaries of an electrical corporation, as defined in Section 218.

(b) Each electric service provider shall register with the commission. As a precondition to registration, the electric service provider shall provide, under oath, declaration, or affidavit, all of the following information to the commission:

(1) Legal name and any other names under which the electric service provider is doing business in California.

(2) Current telephone number.

(3) Current address.

(4) Agent for service of process.

(5) State and date of incorporation, if any.

(6) Number for a customer contact representative, or other personnel for receiving customer inquiries.

(7) Brief description of the nature of the service being provided.

(8) Disclosure of any civil, criminal, or regulatory sanctions or penalties imposed within the 10 years immediately prior to registration, against the company or any owner, partner, officer, or director of the company pursuant to any state or federal consumer protection law or regulation, and of any felony convictions of any kind against the company or any owner, partner, officer, or director of the company. In addition, each electric service provider shall furnish the commission with fingerprints for those owners, partners, officers, and managers of the electric service provider specified by any commission decision applicable to all electric service providers. The commission shall submit completed fingerprint cards to the Department of Justice. Those fingerprints shall be available for use by the Department of Justice and the Department of Justice may transmit the fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The commission may use information obtained from a national criminal history record check conducted pursuant to this section to determine an electric service provider's eligibility for registration.

(9) Proof of financial viability. The commission shall develop uniform standards for determining financial viability and shall publish those standards for public comment no later than March 31, 1998. In determining the financial viability of the electric service provider, the commission shall take into account the number of customers the potential registrant expects to serve, the number of kilowatthours of electricity it expects to provide, and any other appropriate criteria to ensure that residential and small commercial customers have adequate recourse in the event of fraud or nonperformance.

(10) Proof of technical and operational ability. The commission shall develop uniform standards for determining technical and operational capacity and shall publish those standards for public comment no later than March 31, 1998.

(c) Any registration filing approved by the commission prior to the effective date of this section which does not comply in all respects with the requirements of subdivision (a) of Section 394 shall nevertheless continue in force and effect so long as within 90 days of the effective date of this section the electric service provider undertakes to supplement its registration filing to the satisfaction of the commission. Any registration that is not supplemented by the required information within the time set forth in this subdivision shall be suspended by the commission and shall not be reinstated until the commission has found the registration to be in full compliance with subdivision (a) of Section 394.

(d) Any public agency offering aggregation services as provided for in Section 366 solely to retail electric customers within its jurisdiction that has registered with the commission prior to the enactment of this section may voluntarily withdraw its registration to the extent that it is exempted from registration under this chapter.

(e) Before reentering the market, electric service providers whose registration has been revoked shall file a formal application with the

commission that satisfies the requirements set forth in Section 394.1 and demonstrates the fitness and ability of the electric service provider to comply with all applicable rules of the commission.

~~(f) Registration with the commission is an exercise of the licensing function of the commission, and does not constitute regulation of the rates or terms and conditions of service offered by electric service providers. Nothing in this part authorizes the commission to regulate the rates or terms and conditions of service offered by electric service providers.~~

(f) Registration with the commission is an exercise of the licensing function of the commission, and registration by an electric service provider constitutes agreement of the electric service provider to the jurisdiction, control, and regulation of its rates and terms and conditions of service by the commission. The commission shall exercise such jurisdiction, control, and regulation of electric service providers in their provision of electrical service in the same manner as its exercise of jurisdiction, control, and regulation of electrical corporations, including, but not limited to, enforcement of: energy procurement and contracting standards and requirements; resource adequacy requirements; energy efficiency and demand response requirements; renewable portfolio standards; and appropriate assignment of costs among customers to prevent cost shifting.

Section 10. Section 399.15 of the Public Utilities Code is amended to read:

399.15. (a) In order to fulfill unmet long-term resource needs, the commission shall establish a renewables portfolio standard requiring all electrical corporations to procure a minimum quantity of output from eligible renewable energy resources as a specified percentage of total kilowatthours sold to their retail end-use customers each calendar year, if sufficient funds are made available pursuant to paragraph (2), and Section 399.6 and Chapter 8.6 (commencing with Section 25740) of Division 15 of the Public Resources Code, to cover the above-market costs of eligible renewables, and subject to all of the following:

(1) An electric corporation shall not be required to enter into long-term contracts with eligible renewable energy resources that exceed the market prices established pursuant to subdivision (c) of this section.

(2) The Energy Commission shall provide supplemental energy payments from funds in the New Renewable Resources Account in the Renewable Resource Trust Fund to eligible renewable energy resources pursuant to Chapter 8.6 (commencing with Section 25740) of Division 15 of the Public Resources Code, consistent with this article, for above-market costs. Indirect costs associated with the purchase of eligible renewable energy resources, such as imbalance energy charges, sale of excess energy, decreased generation from existing resources, or transmission upgrades shall not be eligible for supplemental energy payments, but shall be recoverable by an electrical corporation in rates, as authorized by the commission.

(3) For purposes of setting annual procurement targets, the commission shall establish an initial baseline for each electrical corporation based on the actual percentage of retail sales procured from eligible renewable energy resources in 2001, and, to the extent applicable, adjusted going forward pursuant to subdivision (a) of Section 399.12.

(b) The commission shall implement annual procurement targets for each electrical corporation as follows:

~~(1) Beginning on January 1, 2003, each electrical corporation shall, pursuant to subdivision (a), increase its total procurement of eligible renewable energy resources by at least an additional 1 percent of retail sales per year so that 20 percent of its retail sales are procured from eligible renewable energy resources no later than December 31, 2017. An electrical corporation with 20 percent of retail sales procured from eligible renewable energy resources in any year shall not be required to increase its procurement of such resources in the following year.~~

(1) Beginning on January 1, 2003, each retail seller shall, pursuant to subdivision (a), increase its total procurement of eligible renewable energy resources by at least an additional 1 percent of retail sales per year so that 20 percent of its retail sales are procured from eligible renewable energy resources no later than December 31, 2010.

(2) Only for purposes of establishing these targets, the commission shall include all power sold to retail customers by the Department of

Water Resources pursuant to Section 80100 of the Water Code in the calculation of retail sales by an electrical corporation.

(3) In the event that an electrical corporation fails to procure sufficient eligible renewable energy resources in a given year to meet any annual target established pursuant to this subdivision, the electrical corporation shall procure additional eligible renewable energy resources in subsequent years to compensate for the shortfall if sufficient funds are made available pursuant to paragraph (2), and Section 399.6 and Chapter 8.6 (commencing with Section 25740) of Division 15 of the Public Resources Code, to cover the above-market costs of eligible renewables.

(4) If supplemental energy payments from the Energy Commission, in combination with the market prices approved by the commission, are insufficient to cover the above-market costs of eligible renewable energy resources, the commission shall allow an electrical corporation to limit its annual procurement obligation to the quantity of eligible renewable energy resources that can be procured with available supplemental energy payments.

(c) The commission shall establish a methodology to determine the market price of electricity for terms corresponding to the length of contracts with renewable generators, in consideration of the following:

(1) The long-term market price of electricity for fixed price contracts, determined pursuant to the electrical corporation's general procurement activities as authorized by the commission.

(2) The long-term ownership, operating, and fixed-price fuel costs associated with fixed-price electricity from new generating facilities.

(3) The value of different products including baseload, peaking, and as-available output.

(d) The establishment of a renewables portfolio standard shall not constitute implementation by the commission of the federal Public Utility Regulatory Policies Act of 1978 (Public Law 95-617).

(e) The commission shall consult with the Energy Commission in calculating market prices under subdivision (c) and establishing other renewables portfolio standard policies.

Section 11. Chapter 2.4 (commencing with Section 400) is added to Part 1 of Division 1 of the Public Utilities Code, to read:

CHAPTER 2.4. THE RELIABLE ELECTRIC SERVICE ACT

400. This chapter shall be known, and may be cited, as the *Reliable Electric Service Act*.

400.1. The commission and the Legislature shall do all of the following:

(a) Restore and affirm the electric utility's obligation to serve all of its customers reliably and at just and reasonable rates.

(b) Eliminate opportunities for market manipulation and assure the best value for consumers by authorizing cost-based construction and operation of new electric plants as well as competitive utility wholesale electricity procurement.

(c) Protect consumers, the environment, and the reliability of the electricity system, by establishing a comprehensive long-term integrated resource planning process, under regulation, in order to ensure resource adequacy and reasonably priced electricity. Such a process shall include, as a first priority, funding of all cost-effective energy efficiency and conservation programs, and increasing the proportion of electricity provided from cost-effective renewable resources.

(d) Establish and enforce resource adequacy requirements to ensure that adequate physical generating capacity dedicated to serving all load requirements is available to meet peak demand and planning and operating reserves, at such locations and at such times as may be necessary to ensure local area reliability and system reliability, at just and reasonable rates. Resource adequacy requirements shall apply in a nondiscriminatory manner to all load serving entities.

(e) Advance and promote opportunities for consumers to use innovative new technologies, such as distributed generation, consistent with grid reliability and environmental protection and improvement, provided that residential and small commercial customers with average usage of less than 1,000 kilowatt-hours per month and occupying a building that was constructed prior to January 1, 2006, shall not be required to take service under a time-differentiated rate schedule without their affirmative written consent.

400.2. (a) An electrical corporation has an obligation to plan for and provide its customers with reliable electric service at just and

reasonable rates, pursuant to Section 451, including those customers who purchase standby service from the electrical corporation.

(b) For purposes of this chapter, "electric service" includes providing adequate and efficient resources, including utility-owned and procured generation resources, such as new and repowered generation resources, cogeneration, and renewable generation resources, transmission and distribution resources, metering and billing, funding for cost-effective energy efficiency and other demand reduction resources, and employing an adequately sized, well-trained utility workforce, including contracting for maintenance of generation facilities.

400.3. (a) The Public Utilities Commission shall establish a process of resource selection and procurement that achieves the best value for ratepayers as its primary goal.

(b) The commission shall ensure that each electrical corporation achieves the best value for its ratepayers by maintaining a diversified portfolio of non-utility generation under contract with the utility and utility-owned generation, consistent with the electrical corporation's approved long-term integrated resource plan, taking into account price, reliability, stability, efficiency, cost-effectiveness, system impacts, resource diversity, financial integrity of the utility, risk, and environmental performance.

(c) The resource selection process may achieve the best value for ratepayers, as described in subdivisions (a) and (b), by utilizing the following approaches to compare the benefits and costs of alternative resource options:

(1) Competitive solicitations for non-utility generation.

(2) Bilateral contracts for non-utility generation.

(3) Cost-based utility-owned generation that is regulated by the commission.

(d) For purposes of this act, "non-utility generation" means facilities for the generation of electricity owned and operated by an entity other than an electrical corporation; and "load serving entity" does not include a local publicly owned electric utility as defined in Section 9604, the State Water Resources Development System commonly known as the State Water Project, or customer self-generation.

400.4. (a) The commission, in consultation with the Independent System Operator, shall establish resource adequacy requirements to ensure that adequate physical generating capacity dedicated to serving all load requirements is available to meet peak demand and planning and operating reserves, at or deliverable to such locations and at such times as may be necessary to ensure local area reliability and system reliability at just and reasonable rates.

(b) The commission shall implement and enforce these resource adequacy requirements in a nondiscriminatory manner on all load serving entities.

(c) Resource adequacy requirements established by the commission shall provide for and assure all of the following:

(1) System wide and local area grid reliability.

(2) Adequate physical generating capacity dedicated to serve all load requirements, including planning and operating reserves, where and when it is needed.

(3) Adequate and timely investment in new generating capacity to meet future load requirements, including planning and operating reserves.

(4) Market power mitigation.

(5) Deliverability.

(6) Resource commitments by load serving entities at least three years in advance of need, in order to assure that new resources can be constructed if necessary to meet the need.

(d) Pursuant to its authority to revoke or suspend registration pursuant to Section 394.25, the commission shall suspend the registration for a specified period, or revoke the registration, of an electric service provider that fails to comply with the rules and regulations adopted by the commission to enforce resource adequacy requirements.

Section 12. The Legislature may amend this act only to achieve its purposes and intent, by legislation receiving at least a two-thirds vote of each house and signature by the Governor.

Section 13. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.